

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA BOARD OF
PEACE OFFICER STANDARDS AND TRAINING

In the Matter of the Proposed REPORT OF THE
Rules of the Minnesota Board of ADMINISTRATIVE LAW JUDGE
Peace Officer Standards
and Training Governing the
Licensing, Education and
Standards for Peace Officers
and Part-Time Peace Officers

The above-entitled matter came on for hearing before Administrative Law Judge Peter C. Erickson at 9:00 a.m. on Tuesday, October 19, 1993 in Room 5 of the State Office Building, St. Paul, Minnesota. This Report is part of a rulehearing proceeding held pursuant to Minn. Stat. §§ 14.131 - 14.20 to determine whether the Agency has fulfilled all relevant substantive and procedural requirements of law, whether the proposed rules are needed and reasonable, and whether or not the rules, if modified, are substantially different from those originally proposed.

John Docherty, Assistant Attorney General, 1400 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Minnesota Board of Peace Officer Standards and Training (POST Board). George Wetzel, Interim Executive Director, appeared and testified in support of the proposed rules on behalf of the Board. The hearing continued until all interested groups and persons had had an opportunity to testify concerning the adoption of the proposed rules.

The Board must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Stat. § 14.15, subd. 3 and 4, this Report has been submitted to the Chief Administrative Law Judge for his approval. If the Chief Administrative Law Judge approves the adverse findings of this Report, he will advise the Board of actions which will correct the defects and the Board may not adopt the rule until the Chief Administrative Law Judge determines that the defects have been corrected. However, in those instances where the Chief Administrative Law Judge identifies defects which relate to the issues of need or reasonableness, the Board may either adopt the Chief Administrative Law Judge's suggested actions to cure the defects or, in the alternative, if the Board does not elect to adopt the suggested actions, it must submit the proposed rule to the

Legislative Commission to Review Administrative Rules for the Commission's advice and comment.

If the Board elects to adopt the suggested actions of the Chief Administrative Law Judge and makes no other changes and the Chief Administrative Law Judge determines that the defects have been corrected, then the Board may proceed to adopt the rule and submit it to the Revisor of Statutes for a review of the form. If the Board makes changes in the rule other than those suggested by the Administrative Law Judge and the Chief Administrative Law Judge, then it shall submit the rule, with the complete record, to the Chief Administrative Law Judge for a review of the changes before adopting it and submitting it to the Revisor of Statutes.

When the Board files the rule with the Secretary of State, it shall give notice on the day of filing to all persons who requested that they be informed of the filing.

Based upon all the testimony, exhibits and written comments, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On August 23, 1993, the Board filed the following documents with the Chief Administrative Law Judge:

- (a) A copy of the proposed rules certified by the Revisor of Statutes.
- (b) The Order for Hearing.
- (c) The Notice of Hearing proposed to be issued.
- (d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.
- (e) The Statement of Need and Reasonableness.

2. On September 7 1993, a Notice of Hearing and a copy of the proposed rules were published at 18 State Register pp. 755-67.

3. On September 3, 1993, the Board mailed the Notice of Hearing to all persons and associations who had registered their names with the Agency for the purpose of receiving such notice.

4. On September 23, 1993, the Board filed the following documents with the Administrative Law Judge:

- (a) The Notice of Hearing as mailed.
- (b) The Agency's certification that its mailing list was accurate and complete.
- (c) The Affidavit of Mailing the Notice to all persons on the Agency's list.
- (d) An Affidavit of Additional Notice.

- (e) The names of Board personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.
- (f) A copy of the State Register containing the proposed rules.
- (g) All materials received following a Notice of Intent to Solicit Outside Opinion published at 16 State Register p. 2949 (June 22, 1992) and a copy of the Notice.

The documents were available for inspection at the Office of Administrative Hearings from the date of filing to the date of the hearing.

5. The period for submission of written comment and statements remained open through November 8, 1993, the period having been extended by Order of the Administrative Law Judge to 20 calendar days following the hearing. The record closed on November 16, 1993, the fifth business day following the close of the comment period.

Statutory Authority

6. Statutory authority to adopt the proposed rules is contained in Minn. Stat. § 626.843, subd. 1 which gives the Board broad authority to set minimum qualifications and training for peace officers and peace officer training schools. In addition, pursuant to paragraph (m) in subdivision 1, the Board was directed to adopt rules by December 31, 1993 concerning the "supervision of part-time peace officers and requirements for documentation of hours worked by a part-time peace officer who is on active duty."

Other Procedural Requirements

7. The Board estimates that implementation of the proposed supervision of part-time peace officers rule could require expenditures by local public bodies in a total state-wide amount of approximately \$234,650. The Board states that this estimate may be significantly overstated because many of the agencies which will have to implement the new supervisory rule already have equipment and personnel which would obviate any further expenditure.

8. Pursuant to Minn. Stat. § 16A.1285, the Board has notified the Commissioner of Finance of its intent to adopt these rules and sent copies of the notice and proposed rules to the Chair of the House Ways and Means Committee and Senate Finance Committee.

Nature of the Proposed Rules

9. These proposed rules govern the licensing, education, and standards for peace officers and part-time peace officers. The rules are being proposed to implement new legislative directives and reflect changes in the Board's policy which is

consistent with contemporary methods of practice. Many of the proposed rule provisions received no negative public comment and were adequately supported by the Statement of Need and Reasonableness (SONAR). The Judge will not specifically address those provisions in the discussion below and specifically finds that the need for and reasonableness of those proposed rules has been demonstrated.¹ The discussion of the proposed rules which follows will only address substantive issues of need, reasonableness or statutory authority.

Discussion of the Proposed Rules

10. The major issue addressed at the hearing and in written comments was the appropriate level of supervision of part-time peace officers. Proposed Rule 6700.1105, subp. 5, "Supervision of Part-time Peace Officer", requires that "the part-time peace officer and the designated peace officer are aware of their respective identities, the part-time peace officer can directly contact the designated peace officer, and the part-time or designated peace officer can achieve direct personal contact within a reasonable time." The "designated peace officer" is the "peace officer appointed by the chief law enforcement officer or designee and responsible for the supervision of the part-time peace officer." Proposed Rule 6700.1105, subp. 3. The Board states in its SONAR that the supervision provisions are "reasonable because it defines supervision in broad terms which merely require that the part-time peace officer and designated officer can directly contact one another and can achieve direct personal contact within a reasonable time." The Board asserts that the proposed requirements are "reasonable because part-time peace officers are allowed to practice without meeting the same educational or training requirements as those imposed upon peace officers and because this is the least restrictive definition of supervision that the Board considers meaningful." Many persons testified and submitted comments contending that the level of supervision imposed by the rule was too restrictive; that full-time staff would be unduly burdened and that small police departments who employ few or only one peace officer could not comply with the requirement.

11. Based on these comments from the public, the Board has proposed to modify the supervision rule as follows:

"Supervision of part-time peace officer" means the part-time peace officer and the designated peace officer are aware of their respective identities, the part-time peace officer has the

¹ In order for an agency to meet the burden of reasonableness, it must demonstrate by a presentation of facts that the rule is rationally related to the end sought to be achieved. Broen Memorial Home v. Minnesota Department of Human Services, 364 N.W.2d 436, 440 (Minn. App. 1985). Those facts may either be adjudicative facts or legislative facts. Manufactured Housing Institute v. Pettersen, 347 N.W.2d 238, 244 (Minn. 1984). The agency must show that a reasoned determination has been made. Manufactured Housing Institute at 246.

ability to directly contact the designated peace officer, and the part-time peace officer or designated peace officer can achieve direct personal contact within a reasonable period of time.

12. Minn. Stat. § 626.8465, subd. 1 provides that:

No law enforcement agency shall utilize the services of a part-time peace officer unless the part-time peace officer exercises the part-time peace officer's powers and duties under the supervision of a licensed peace officer designated by the chief law enforcement officer. Supervision may also be via radio communications. With the consent of the county sheriff, the designated supervising officer may be a member of the county sheriff's department.

The Judge reads the statutory language as requiring either in-person direct supervision or supervision by radio contact between the part-time peace officer and the supervising peace officer. The Judge finds that the modification proposed by the Board above meets the statutory criteria and is less restrictive than the language initially proposed. The need for and reasonableness of the modified rule has been demonstrated. It is not a substantial change from the rules as initially proposed.

13. Proposed Rule 6700.0100, subp. 8 defines "chief law enforcement officer" as the "designated head and the highest ranking board-licensed peace officer within an agency. Previously, this definition provided that the "appointing authority" was the "chief law enforcement officer" if there was no "highest ranking board-licensed officer" in the agency. The Board contends that because the chief law enforcement officer is responsible for hiring, training, and supervising other licensed peace officers and part-time peace officers, it is imperative that the "chief law enforcement officer" have the education and training that licensure will provide. The Minneapolis Police Department argues that it should not be "restricted to a licensed peace officer as agency heads are leaders and managers . . . these qualities don't require a licensed peace officer." The city of Skyline asserts that there are smaller cities which do not need any full-time officers and that the various city councils are really the head of the agency.

14. The Judge finds that the need for and reasonableness of the proposed rule has been demonstrated. This rule does not preclude an agency or city council from hiring a manager or "leader" to perform certain functions within an agency as long as there is a board-licensed "chief law enforcement officer". Due to the statutory requirement for supervision of part-time peace officers which is also contained in these rules, even small cities with small agencies will be required to have someone on the force as a "chief law enforcement officer" if only for the purpose of supervision. The supervision of a part-time officer cannot be performed by a city council or city manager.

15. Proposed Rule 6700.1110, subp. 4 establishes criteria for the supervision of a part-time peace officer by a designated peace officer in a different agency. Item C. of that subpart requires that a written agreement be entered into between the chief law enforcement officers of both agencies which includes provisions concerning: (1) the effective date of the agreement; (2) liability and indemnification; and (3) how the agreement may be altered or severed. Items A. and B. of that subpart specifically require compliance with these rules when a part-time peace officer is supervised by a different agency. George Sugden, a part-time peace officer employed by the city of Skyline, testified that the Board does not have authority to dictate the terms of an agreement between two agencies.

16. There is clear statutory authority for the Board to promulgate rules concerning the supervision of part-time peace officers. However, the Judge finds that this authority does not extend to mandating the terms of an agreement between the providing and supervising agency. Obviously, the supervising agency must comply with the statute and rules governing supervision. As long as the law is followed regarding supervision, other terms of an agreement entered into between the entities falls outside the statutory authority of the Board. Obviously, an agreement between the entities may facilitate and clarify the obligations of each, but as long as the supervision requirements are followed, the terms of such an agreement are not within the purview of the Board's authority. In order to correct this defect, Item C. of proposed Rule 6700.1110, subp. 4 must be deleted.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. That the Board gave proper notice of the hearing in this matter.

2. That the Board has fulfilled the procedural requirements of Minn. Stat. §§ 14.14, subds. 1, 1a and 14.14, subd. 2, and all other procedural requirements of law or rule.

3. That the Board has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3 and 14.50 (i)(ii), except as noted at Finding 16.

4. That the Board has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (iii).

5. That the amendments and additions to the proposed rules which were suggested by the Board after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 14.15, subd. 3, and Minn. Rule 1400.1000, subp. 1 and 1400.1100.

6. That the Administrative Law Judge has suggested action to correct the defects cited in Conclusion 3 as noted at Finding 16.

7. That due to Conclusion 3, this Report has been submitted to the Chief Administrative Law Judge for his approval pursuant to Minn. Stat. § 14.15, subd. 3.

8. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

9. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Board from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

It IS HEREBY RECOMMENDED: that the proposed rules be adopted except where specifically otherwise noted above.

Dated this 13th day of December, 1993.

s/ Peter C. Erickson

PETER C. ERICKSON
Administrative Law Judge